

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

2005 NOV -2 P 3: 57

LATTIME CONSTRUCTION AND
HOME BUILDING, INC.,

Plaintiff,

v.

THE BERRY COMPANY, et al.,

Defendants.

CASE NO.

CLERK OF DISTRICT COURT
MIDDLE DISTRICT ALA

1:05CV 1062-F

NOTICE OF REMOVAL

Defendants L. M. Berry and Company (identified in plaintiff's complaint by its trade name, The Berry Company) ("Berry") and CenturyTel Service Group, L.L.C. (identified in plaintiff's complaint as "CenturyTel") file this notice of removal of this civil action to the United States District Court for the Middle District of Alabama. This civil action is removed from the Circuit Court of Houston County, Alabama where the action is now pending, as provided by 28 U.S.C. § 1332 and 28 U.S.C. §1441(a) and (b). The defendants state the following in support of this notice of removal:

1. This action was commenced in the Circuit Court of Houston County, Alabama on September 20, 2005, and is now pending in that Court under the assigned case number of Number CV 2005-00591.

2. This action is removable to this Court, pursuant to 28 U.S.C. § 1441(a) and (b), in that it is an action between citizens of different States and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, as set forth in more detail below.

3. This Notice has been filed within 30 days of the service of the complaint on defendant Berry. Berry was served with the complaint on October 4, 2005. CenturyTel Service

Group L.L.C. has not been served with the complaint as of the date of the filing of this notice of removal. The address indicated for service on "CenturyTel" in plaintiff's complaint is P. O. Box 6001, Marion, Louisiana 71260-6001. This address is not a business address of CenturyTel Service Group, L.L.C. Further, there is no corporate entity by the name of "CenturyTel."

4. This Notice also is filed not more than one year after the commencement of this action, as required by 28 U.S.C. § 1446(b).

5. A true and correct copy of all process, pleadings, and orders served upon defendant Berry in this action is filed with this notice as Exhibit A.

6. Defendants will give written notice of the filing of this Notice of Removal to counsel for the plaintiff and to the Circuit Court of Houston County, Alabama, as required under 28 U.S.C. § 1446(d).

DIVERSITY OF CITIZENSHIP

7. Plaintiff is a corporation organized under the laws of the State of Alabama and with its principal place of business in the State of Alabama. Defendant Berry is a corporation incorporated in the State of Georgia, with its principal place of business in the State of Ohio. Berry is therefore is a citizen of the States of Georgia and Ohio for diversity jurisdiction purposes. Defendant CenturyTel Service Group, L.L.C. is a limited liability company organized under the laws of the State of Louisiana and with its principal place of business in the State of Louisiana. There is complete diversity of citizenship between the plaintiff and the named defendants in this action.

8. Plaintiff's complaint also purports to state claims against unnamed, fictitious defendants. For purposes of removal, however, "the citizenship of defendants sued under fictitious names shall be disregarded." 28 U.S.C. § 1441(a).

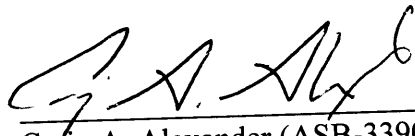
AMOUNT IN CONTROVERSY

9. In its complaint, plaintiff specifically demands "judgment against Defendant for compensatory and punitive damages in the sum of \$500,000.00, and costs." (See Complaint at ¶¶ 5, 9, 12). Because the plaintiff explicitly demands an amount in excess of the \$75,000.00 threshold established by 28 U.S.C. § 1441(b), the amount in controversy is satisfied.

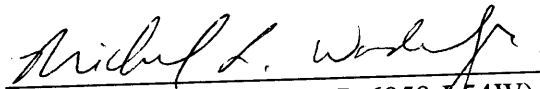
JOINDER IN REMOVAL BY CENTURYTEL SERVICE GROUP, L.L.C.

10. As set forth in paragraph 3 of this Notice of Removal, CenturyTel Service Group, L.L.C. has not been served with process in this civil action as of the date of the filing of this notice of removal. The undersigned counsel represent both Berry and CenturyTel Service Group, L.L.C. in this civil action, and CenturyTel Service Group, L.L.C. expressly consents to the removal of this action and joins in this notice of removal.

WHEREFORE, Defendants L. M. Berry and Company and CenturyTel Service Group, L.L.C. request that this action proceed in this Court as an action properly removed to this Court.



Craig A. Alexander (ASB-3390-N68C)



Michael L. Wade, Jr. (ASB-6959-L54W)

Counsel for Defendants L. M. Berry and Company
and CenturyTel Service Group, L.L.C.

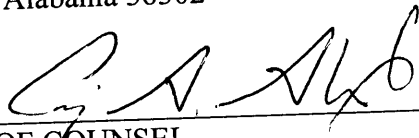
OF COUNSEL:

ADAMS AND REESE LLP
2100 3rd Avenue North, Suite 1100
Birmingham, Alabama 35203
Phone: (205) 250-5000
Facsimile: (205) 250-5034

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on counsel for the plaintiff by directing a copy of same through first-class United States mail, postage prepaid and properly addressed, on this the 2nd day of November, 2005, as follows:

John E. Byrd
P.O. Box 536
Dothan, Alabama 36302



OF COUNSEL